

AMENDED IN SENATE JUNE 9, 2010

AMENDED IN SENATE MAY 28, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1565

Introduced by Assembly Member ~~Ruskin Buchanan~~

(Principal coauthors: ~~Assembly Members Coto and Fletcher~~)

(Principal coauthor: ~~Senator Alquist~~)

(Coauthors: ~~Assembly Members Buchanan, Fong, Jeffries, Lieu, and Ma~~)

(Coauthor: ~~Senator Correa~~)

March 12, 2009

~~An act to amend Sections 17052.12 and 23609~~ *An act to add and repeal Chapter 12.9 (commencing with Section 7092) of Division 7 of Title 1 of the Government Code, and to add and repeal Sections 17052.66 and 23609.66 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1565, as amended, ~~Ruskin Buchanan. Income and corporation taxes; credits; research.~~ *Research and development tax credit areas.*

Existing law establishes the Department of Housing and Community Development with duties that include overseeing various programs to promote economic and community development throughout the state.

This bill would authorize, until January 1, 2016, the department to designate, based on specific factors, a Research and Development Tax Credit Area located within an Innovation Hub or a city, as respectively defined.

The Personal Income Tax Law and the Corporation Tax Law, by reference to a specified federal statute, allow a credit against taxes imposed by those laws for increasing research activities. The amount of the credit under both laws is equal to 15% of the excess of the qualified research expenses, as defined, for the taxable year over the base amount, as defined, and, in addition, under the Corporation Tax Law, 24% of the basic research payments, as defined.

~~This bill would, under both laws for taxable years beginning on or after January 1, 2011, incrementally increase the applicable percentage of the credit for qualified research expenditures from 15% to 20%. This bill would, under the Personal Income Tax Law, also allow a credit for 24% of the basic research payments for taxable years beginning on or after January 1, 2011.~~

This bill would, under both laws, for each taxable year beginning on or after January 1, 2011, and before January 1, 2016, provide to a qualified taxpayer, as defined, a tax credit for research and development, as defined, for expenses equal to 20% of the research and development expenses relating to the development of alternative energy sources and advanced transportation technologies, as those terms are defined, conducted in California in a research and development tax area, as described. The bill would further require the Legislative Analyst's Office to report to the Legislature on the effectiveness of the tax credit program established by this act.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Chapter 12.9 (commencing with Section 7092)
- 2 is added to Division 7 of Title 1 of the Government Code, to read:
- 3
- 4 CHAPTER 12.9. RESEARCH AND DEVELOPMENT TAX CREDIT
- 5 AREA
- 6
- 7 7092. Unless context requires otherwise, the following
- 8 definitions shall apply to this chapter:
- 9 (a) "City" means a city incorporated on or after July 1, 2000.
- 10 (b) "Department" means the Department of Housing and
- 11 Community Development.

1 (c) “iHub” means an Innovation Hub designated by the
2 Business, Transportation and Housing Agency.

3 (d) “Research and Development Tax Credit Area” or “area”
4 means a geographical region designated by the department
5 pursuant to this chapter.

6 7092.5. A Research and Development Tax Credit Area shall
7 be located entirely within the jurisdiction of a city or iHub and
8 shall be smaller in size than the city or iHub.

9 7092.10. (a) A city or iHub is authorized to make a proposal
10 to the department to have a Research and Development Tax Credit
11 Area located within its jurisdiction.

12 (b) A proposal to have the department designate an area shall
13 include, but not be limited to, both of the following:

14 (1) The geographical boundaries of the proposed area.

15 (2) The targeted number of new, permanent jobs anticipated to
16 be created by the proposed area.

17 7092.15. (a) The department is authorized to designate a
18 Research and Development Tax Credit Area after evaluating a
19 proposal by a city or iHub.

20 (b) The department shall evaluate a proposal to designate an
21 area based upon all of the following criteria:

22 (1) The extent to which the anticipated benefit to the state from
23 projects or products produced within the proposed area equals or
24 exceeds the anticipated benefit to entities claiming the tax credits
25 pursuant to Sections 17052.66 and 23609.66 of the Revenue and
26 Taxation Code.

27 (2) The extent to which the proposed area will create new,
28 permanent jobs in this state.

29 (3) The extent to which projects or products produced within
30 the proposed area result in a reduction of greenhouse gases, a
31 reduction in air or water pollution, an increase in energy efficiency,
32 or a reduction in energy consumption, beyond what is required by
33 any federal or state law or regulation.

34 (4) Any other factors the department deems appropriate in
35 accordance with this chapter.

36 7092.20. This chapter shall remain in effect only until January
37 1, 2016, and as of that date is repealed.

38 SEC. 2. Section 17052.66 is added to the Revenue and Taxation
39 Code, to read:

1 17052.66. (a) For each taxable year beginning on or after
2 January 1, 2011, and before January 1, 2016, there shall be
3 allowed as a credit against the “net tax” (as defined by Section
4 17039) for the taxable year an amount determined in accordance
5 with Section 41 of the Internal Revenue Code, except as otherwise
6 provided in this section.

7 (b) For purposes of this section:

8 (1) “Qualified taxpayer” means a taxpayer that conducts
9 research and development in a research and development tax area
10 relating to either of the following fields:

11 (A) Alternative energy sources, as defined in paragraph (2) of
12 subdivision (b) and subdivision (c) of Section 26003 of the Public
13 Resources Code; the application of cogeneration technology, as
14 defined in Section 25134 of the Public Resources Code; the
15 conservation of energy through the use of solar, biomass, wind,
16 geothermal, hydroelectricity under 30 megawatts, or any other
17 source of energy, the efficient use of which will reduce the use of
18 fossil and nuclear fuels. Alternative energy sources also include
19 advanced electric distributive generation technology, as defined
20 in subdivision (a) of Section 379.8 of the Public Utilities Code, or
21 energy storage technologies and their component materials.

22 (B) Advanced transportation technologies, as defined in
23 subdivision (d) of Section 26003 of the Public Resources Code.
24 Advanced transportation technologies include emerging
25 commercially competitive transportation-related technologies
26 identified by a transportation authority as capable of creating
27 long-term, high value-added jobs for Californians while enhancing
28 the state’s commitment to energy conservation, pollution reduction,
29 and transportation efficiency. Those technologies may include,
30 but are not limited to, intelligent vehicle highway systems,
31 advanced telecommunications for transportation, command,
32 control, and communications for public transit vehicles and
33 systems, electric vehicles and ultralow-emission vehicles,
34 high-speed rail and magnetic levitation passenger systems, and
35 fuel cells.

36 (2) “Research and development” means those activities that
37 are described in Section 174 of the Internal Revenue Code or in
38 any regulation thereunder.

39 (3) “Research and development tax area” means a research
40 and development tax area in the state established pursuant to

1 Chapter 12.9 (commencing with Section 7092) of Division 7 of
2 Title 1 of the Government Code, but excludes any area designated
3 as an enterprise zone pursuant to Chapter 12.8 (commencing with
4 Section 7070) of Division 7 of Title 1 of the Government Code.

5 (c) In the case where the credit allowed under this section
6 exceeds the “net tax,” the excess may be carried over to reduce
7 the “net tax” in the following year, and succeeding years if
8 necessary, until the credit has been exhausted, but only to the
9 extent that the qualified taxpayer continues to conduct research
10 and development in the research and development tax area during
11 the time for which the reduction in “net tax” is claimed.

12 (d) For each taxable year beginning on or after January 1,
13 2011, the reference to “Section 501(a)” in Section 41(b)(3)(C) of
14 the Internal Revenue Code, relating to contract research expenses,
15 is modified to read “this part or Part 11 (commencing with Section
16 23001).”

17 (e) Section 41(h) of the Internal Revenue Code, relating to
18 termination, shall not apply.

19 (f) Section 41(g) of the Internal Revenue Code, relating to
20 special rule for passthrough of credit, is modified by each of the
21 following:

22 (1) The last sentence shall not apply.

23 (2) If the amount determined under Section 41(a) of the Internal
24 Revenue Code for any taxable year exceeds the limitation of Section
25 41(g) of the Internal Revenue Code, that amount may be carried
26 over to other taxable years under the rules of subdivision (e);
27 except that the limitation of Section 41(g) of the Internal Revenue
28 Code shall be taken into account in each subsequent taxable year.

29 (g) Section 41(a)(3) of the Internal Revenue Code shall not
30 apply.

31 (h) Section 41(b)(3)(D) of the Internal Revenue Code, relating
32 to amounts paid to eligible small businesses, universities, and
33 federal laboratories, shall not apply.

34 (i) Section 41(f)(6), relating to energy research consortium,
35 shall not apply.

36 (j) The credit allowed by this section shall be in addition to any
37 other credit allowed by this part for the expenses on which the
38 credit under this section is based.

39 (k) This section shall remain in effect only until December 1,
40 2016, and as of that date is repealed.

SEC. 3. Section 23609.66 is added to the Revenue and Taxation Code, to read:

23609.66. (a) For each taxable year beginning on or after January 1, 2011, and before January 1, 2016, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount determined in accordance with Section 41 of the Internal Revenue Code, except as otherwise provided in this section.

(b) For purposes of this section:

(1) "Qualified taxpayer" means a taxpayer that conducts research and development in a research and development tax area relating to either of the following fields:

(A) Alternative energy sources, as defined in paragraph (2) of subdivision (b) and subdivision (c) of Section 26003 of the Public Resources Code; the application of cogeneration technology, as defined in Section 25134 of the Public Resources Code; the conservation of energy through the use of solar, biomass, wind, geothermal, hydroelectricity under 30 megawatts, or any other source of energy, the efficient use of which will reduce the use of fossil and nuclear fuels. Alternative energy sources also include advanced electric distributive generation technology, as defined in subdivision (a) of Section 379.8 of the Public Utilities Code, or energy storage technologies and their component materials.

(B) Advanced transportation technologies, as defined in subdivision (d) of Section 26003 of the Public Resources Code. Advanced transportation technologies include emerging commercially competitive transportation-related technologies identified by a transportation authority as capable of creating long-term, high value-added jobs for Californians while enhancing the state's commitment to energy conservation, pollution reduction, and transportation efficiency. Those technologies may include, but are not limited to, intelligent vehicle highway systems, advanced telecommunications for transportation, command, control, and communications for public transit vehicles and systems, electric vehicles and ultralow-emission vehicles, high-speed rail and magnetic levitation passenger systems, and fuel cells.

(2) "Research and development" means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(3) “Research and development tax area” means a research and development tax area in the state established pursuant to Chapter 12.9 (commencing with Section 7092) of Division 7 of Title 1 of the Government Code, but excludes any area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(c) In the case where the credit allowed by this section exceeds the “tax,” the excess may be carried over to reduce the “tax” in the following year, and succeeding years if necessary, until the credit has been exhausted, but only to the extent that the qualified taxpayer continues to conduct research and development in the research and development tax area during the time for which the reduction in “tax” is claimed.

(d) For each taxable year beginning on or after January 1, 2011, the reference to “Section 501(a)” in Section 41(b)(3)(C) of the Internal Revenue Code, relating to contract research expenses, is modified to read “this part or Part 10 (commencing with Section 17001).”

(e) Section 41(h) of the Internal Revenue Code, relating to termination, shall not apply.

(f) Section 41(g) of the Internal Revenue Code, relating to special rule for passthrough of credit, is modified by each of the following:

(1) The last sentence shall not apply.

(2) If the amount determined under Section 41(a) of the Internal Revenue Code for any taxable year exceeds the limitation of Section 41(g) of the Internal Revenue Code, that amount may be carried over to other taxable years under the rules of subdivision (f), except that the limitation of Section 41(g) of the Internal Revenue Code shall be taken into account in each subsequent taxable year.

(g) Section 41(a)(3) of the Internal Revenue Code shall not apply.

(h) Section 41(b)(3)(D) of the Internal Revenue Code, relating to amounts paid to eligible small businesses, universities, and federal laboratories, shall not apply.

(i) Section 41(f)(6) of the Internal Revenue Code, relating to energy research consortium, shall not apply.

(j) The credit allowed by this section shall be in addition to any other credit allowed by this part for the expenses on which the credit under this section is based.

1 (k) *This section shall remain in effect only until December 1,*
2 *2016, and as of that date is repealed.*

3 SEC. 4. *Between January 1, 2016, and December 31, 2016,*
4 *the Legislative Analyst's Office shall report to the Legislature on*
5 *the effectiveness of the Research and Development Tax Credit*
6 *Area program established pursuant to Chapter 12.9 (commencing*
7 *with Section 7092) of Division 7 of Title 1 of the Government Code,*
8 *by evaluating factors, including, but not limited to, all of the*
9 *following:*

10 (i) *The number of jobs created by the program in this state.*

11 (j) *The number of businesses that have remained in this state*
12 *or relocated to this state as a result of the program.*

13 (k) *The amount of state and local revenue and economic activity*
14 *generated by the program.*

15 (l) *The amount of reduction in greenhouse gases, air pollution,*
16 *water pollution, or energy consumption as a result of the program.*

17 SEC. 5. *This act provides for a tax levy within the meaning of*
18 *Article IV of the Constitution and shall go into immediate effect.*

19 SECTION 1. ~~Section 17052.12 of the Revenue and Taxation~~
20 ~~Code is amended to read:~~

21 ~~17052.12. For each taxable year beginning on or after January~~
22 ~~1, 1987, there shall be allowed as a credit against the "net tax" (as~~
23 ~~defined by Section 17039) for the taxable year an amount~~
24 ~~determined in accordance with Section 41 of the Internal Revenue~~
25 ~~Code, except as follows:~~

26 ~~(a) For each taxable year beginning before January 1, 1997, the~~
27 ~~reference to "20 percent" in Section 41(a)(1) of the Internal~~
28 ~~Revenue Code is modified to read "8 percent."~~

29 ~~(b) (1) For each taxable year beginning on or after January 1,~~
30 ~~1997, and before January 1, 1999, the reference to "20 percent"~~
31 ~~in Section 41(a)(1) of the Internal Revenue Code is modified to~~
32 ~~read "11 percent."~~

33 ~~(2) For each taxable year beginning on or after January 1, 1999,~~
34 ~~and before January 1, 2000, the reference to "20 percent" in Section~~
35 ~~41(a)(1) of the Internal Revenue Code is modified to read "12~~
36 ~~percent."~~

37 ~~(3) For each taxable year beginning on or after January 1, 2000,~~
38 ~~and before January 1, 2011, the reference to "20 percent" in Section~~
39 ~~41(a)(1) of the Internal Revenue Code is modified to read "15~~
40 ~~percent."~~

1 ~~(4) For each taxable year beginning on or after January 1, 2011,~~
2 ~~and before January 1, 2013, both of the following shall apply:~~

3 ~~(A) The reference to “20 percent” in Section 41(a)(1) of the~~
4 ~~Internal Revenue Code is modified to read “16.25 percent.”~~

5 ~~(B) The reference to “20 percent” in Section 41(a)(2) of the~~
6 ~~Internal Revenue Code is modified to read “24 percent.”~~

7 ~~(5) For each taxable year beginning on or after January 1, 2013,~~
8 ~~and before January 1, 2014, both of the following shall apply:~~

9 ~~(A) The reference to “20 percent” in Section 41(a)(1) of the~~
10 ~~Internal Revenue Code is modified to read “17.50 percent.”~~

11 ~~(B) The reference to “20 percent” in Section 41(a)(2) of the~~
12 ~~Internal Revenue Code is modified to read “24 percent.”~~

13 ~~(6) For each taxable year beginning on or after January 1, 2014,~~
14 ~~and before January 1, 2015, both of the following shall apply:~~

15 ~~(A) The reference to “20 percent” in Section 41(a)(1) of the~~
16 ~~Internal Revenue Code is modified to read “18.75 percent.”~~

17 ~~(B) The reference to “20 percent” in Section 41(a)(2) of the~~
18 ~~Internal Revenue Code is modified to read “24 percent.”~~

19 ~~(7) For each taxable year beginning on or after January 1, 2015,~~
20 ~~both of the following shall apply:~~

21 ~~(A) The reference to “20 percent” in Section 41(a)(1) of the~~
22 ~~Internal Revenue Code shall apply.~~

23 ~~(B) The reference to “20 percent” in Section 41(a)(2) of the~~
24 ~~Internal Revenue Code is modified to read “24 percent.”~~

25 ~~(c) Section 41(a)(2) of the Internal Revenue Code, relating to~~
26 ~~basic research payments, shall not apply.~~

27 ~~(d) “Qualified research” shall include only research conducted~~
28 ~~in California.~~

29 ~~(e) In the case where the credit allowed under this section~~
30 ~~exceeds the “net tax,” the excess may be carried over to reduce~~
31 ~~the “net tax” in the following year, and succeeding years if~~
32 ~~necessary, until the credit has been exhausted.~~

33 ~~(f) (1) With respect to any expense paid or incurred after the~~
34 ~~operative date of Section 6378, Section 41(b)(1) of the Internal~~
35 ~~Revenue Code is modified to exclude from the definition of~~
36 ~~“qualified research expense” any amount paid or incurred for~~
37 ~~tangible personal property that is eligible for the exemption from~~
38 ~~sales or use tax provided by Section 6378.~~

39 ~~(2) For each taxable year beginning on or after January 1, 1998,~~
40 ~~the reference to “Section 501(a)” in Section 41(b)(3)(C) of the~~

1 Internal Revenue Code, relating to contract research expenses, is
2 modified to read “this part of Part 11 (commencing with Section
3 23001).”

4 (g) (1) For each taxable year beginning on or after January 1,
5 2000:

6 (A) The reference to “2.65 percent” in Section 41(c)(4)(A)(i)
7 of the Internal Revenue Code is modified to read “one and
8 forty-nine hundredths of one percent.”

9 (B) The reference to “3.2 percent” in Section 41(c)(4)(A)(ii) of
10 the Internal Revenue Code is modified to read “one and
11 ninety-eight hundredths of one percent.”

12 (C) The reference to “3.75 percent” in Section 41(c)(4)(A)(iii)
13 of the Internal Revenue Code is modified to read “two and
14 forty-eight hundredths of one percent.”

15 (2) Section 41(c)(4)(B) shall not apply and in lieu thereof an
16 election under Section 41(c)(4)(A) of the Internal Revenue Code
17 may be made for any taxable year of the taxpayer beginning on or
18 after January 1, 1998. That election shall apply to the taxable year
19 for which made and all succeeding taxable years unless revoked
20 with the consent of the Franchise Tax Board.

21 (3) Section 41(c)(6) of the Internal Revenue Code, relating to
22 gross receipts, is modified to take into account only those gross
23 receipts from the sale of property held primarily for sale to
24 customers in the ordinary course of the taxpayer’s trade or business
25 that is delivered or shipped to a purchaser within this state,
26 regardless of f.o.b. point or any other condition of the sale.

27 (h) Section 41(h) of the Internal Revenue Code, relating to
28 termination, shall not apply.

29 (i) Section 41(g) of the Internal Revenue Code, relating to
30 special rule for passthrough of credit, is modified by each of the
31 following:

32 (1) The last sentence shall not apply.

33 (2) If the amount determined under Section 41(a) of the Internal
34 Revenue Code for any taxable year exceeds the limitation of
35 Section 41(g) of the Internal Revenue Code, that amount may be
36 carried over to other taxable years under the rules of subdivision
37 (e); except that the limitation of Section 41(g) of the Internal
38 Revenue Code shall be taken into account in each subsequent
39 taxable year.

1 ~~SEC. 2.~~ Section 23609 of the Revenue and Taxation Code is
2 amended to read:

3 ~~23609.~~ For each taxable year beginning on or after January 1,
4 1987, there shall be allowed as a credit against the “tax” (as defined
5 by Section 23036) an amount determined in accordance with
6 Section 41 of the Internal Revenue Code, except as follows:

7 ~~(a)~~ For each taxable year beginning before January 1, 1997,
8 both of the following modifications shall apply:

9 ~~(1)~~ The reference to “20 percent” in Section 41(a)(1) of the
10 Internal Revenue Code is modified to read “8 percent.”

11 ~~(2)~~ The reference to “20 percent” in Section 41(a)(2) of the
12 Internal Revenue Code is modified to read “12 percent.”

13 ~~(b) (1)~~ For each taxable year beginning on or after January 1,
14 1997, and before January 1, 1999, both of the following
15 modifications shall apply:

16 ~~(A)~~ The reference to “20 percent” in Section 41(a)(1) of the
17 Internal Revenue Code is modified to read “11 percent.”

18 ~~(B)~~ The reference to “20 percent” in Section 41(a)(2) of the
19 Internal Revenue Code is modified to read “24 percent.”

20 ~~(2)~~ For each taxable year beginning on or after January 1, 1999,
21 and before January 1, 2000, both of the following shall apply:

22 ~~(A)~~ The reference to “20 percent” in Section 41(a)(1) of the
23 Internal Revenue Code is modified to read “12 percent.”

24 ~~(B)~~ The reference to “20 percent” in Section 41(a)(2) of the
25 Internal Revenue Code is modified to read “24 percent.”

26 ~~(3)~~ For each taxable year beginning on or after January 1, 2000,
27 and before January 1, 2011, both of the following shall apply:

28 ~~(4)~~ For each taxable year beginning on or after January 1, 2011,
29 and before January 1, 2013, both of the following shall apply:

30 ~~(A)~~ The reference to “20 percent” in Section 41(a)(1) of the
31 Internal Revenue Code is modified to read “16.25 percent.”

32 ~~(B)~~ The reference to “20 percent” in Section 41(a)(2) of the
33 Internal Revenue Code is modified to read “24 percent.”

34 ~~(5)~~ For each taxable year beginning on or after January 1, 2013,
35 and before January 1, 2014, both of the following shall apply:

36 ~~(A)~~ The reference to “20 percent” in Section 41(a)(1) of the
37 Internal Revenue Code is modified to read “17.50 percent.”

38 ~~(B)~~ The reference to “20 percent” in Section 41(a)(2) of the
39 Internal Revenue Code is modified to read “24 percent.”

~~(6) For each taxable year beginning on or after January 1, 2014, and before January 1, 2015, both of the following shall apply:~~

~~(A) The reference to “20 percent” in Section 41(a)(1) of the Internal Revenue Code is modified to read “18.75 percent.”~~

~~(B) The reference to “20 percent” in Section 41(a)(2) of the Internal Revenue Code is modified to read “24 percent.”~~

~~(7) For each taxable year beginning on or after January 1, 2015, both of the following shall apply:~~

~~(A) The reference to “20 percent” in Section 41(a)(1) of the Internal Revenue Code shall apply.~~

~~(B) The reference to “20 percent” in Section 41(a)(2) of the Internal Revenue Code is modified to read “24 percent.”~~

~~(A) The reference to “20 percent” in Section 41(a)(1) of the Internal Revenue Code is modified to read “15 percent.”~~

~~(B) The reference to “20 percent” in Section 41(a)(2) of the Internal Revenue Code is modified to read “24 percent.”~~

~~(e) (1) With respect to any expense paid or incurred after the operative date of Section 6378, Section 41(b)(1) of the Internal Revenue Code is modified to exclude from the definition of “qualified research expense” any amount paid or incurred for tangible personal property that is eligible for the exemption from sales or use tax provided by Section 6378.~~

~~(2) “Qualified research” and “basic research” shall include only research conducted in California.~~

~~(d) The provisions of Section 41(e)(7)(A) of the Internal Revenue Code, shall be modified so that “basic research,” for purposes of this section, includes any basic or applied research including scientific inquiry or original investigation for the advancement of scientific or engineering knowledge or the improved effectiveness of commercial products, except that the term does not include any of the following:~~

~~(1) Basic research conducted outside California.~~

~~(2) Basic research in the social sciences, arts, or humanities.~~

~~(3) Basic research for the purpose of improving a commercial product if the improvements relate to style, taste, cosmetic, or seasonal design factors.~~

~~(4) Any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas).~~

~~(e) (1) In the case of a taxpayer engaged in any biopharmaceutical research activities that are described in codes 2833 to 2836, inclusive, or any research activities that are described in codes 3826, 3829, or 3841 to 3845, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, or any other biotechnology research and development activities, the provisions of Section 41(e)(6) of the Internal Revenue Code shall be modified to include both of the following:~~

~~(A) A qualified organization as described in Section 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an institution of higher education as described in Section 3304(f) of the Internal Revenue Code.~~

~~(B) A charitable research hospital owned by an organization that is described in Section 501(c)(3) of the Internal Revenue Code, is exempt from taxation under Section 501(a) of the Internal Revenue Code, is not a private foundation, is designated a "specialized laboratory cancer center," and has received Clinical Cancer Research Center status from the National Cancer Institute.~~

~~(2) For purposes of this subdivision:~~

~~(A) "Biopharmaceutical research activities" means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities that make use of chemical compounds to produce commercial products.~~

~~(B) "Other biotechnology research and development activities" means research and development activities consisting of the application of recombinant DNA technology to produce commercial products, as well as research and development activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.~~

~~(f) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.~~

1 ~~(g) For each taxable year beginning on or after January 1, 1998,~~
2 ~~the reference to “Section 501(a)” in Section 41(b)(3)(C) of the~~
3 ~~Internal Revenue Code, relating to contract research expenses, is~~
4 ~~modified to read “this part of Part 10 (commencing with Section~~
5 ~~17001).”~~

6 ~~(h) (1) For each taxable year beginning on or after January 1,~~
7 ~~2000:~~

8 ~~(A) The reference to “2.65 percent” in Section 41(c)(4)(A)(i)~~
9 ~~of the Internal Revenue Code is modified to read “one and~~
10 ~~forty-nine hundredths of one percent.”~~

11 ~~(B) The reference to “3.2 percent” in Section 41(c)(4)(A)(ii) of~~
12 ~~the Internal Revenue Code is modified to read “one and~~
13 ~~ninety-eight hundredths of one percent.”~~

14 ~~(C) The reference to “3.75 percent” in Section 41(c)(4)(A)(iii)~~
15 ~~of the Internal Revenue Code is modified to read “two and~~
16 ~~forty-eight hundredths of one percent.”~~

17 ~~(2) Section 41(c)(4)(B) shall not apply and in lieu thereof an~~
18 ~~election under Section 41(c)(4)(A) of the Internal Revenue Code~~
19 ~~may be made for any taxable year of the taxpayer beginning on or~~
20 ~~after January 1, 1998. That election shall apply to the taxable year~~
21 ~~for which made and all succeeding taxable years unless revoked~~
22 ~~with the consent of the Franchise Tax Board.~~

23 ~~(3) Section 41(c)(6) of the Internal Revenue Code, relating to~~
24 ~~gross receipts, is modified to take into account only those gross~~
25 ~~receipts from the sale of property held primarily for sale to~~
26 ~~customers in the ordinary course of the taxpayer’s trade or business~~
27 ~~that is delivered or shipped to a purchaser within this state,~~
28 ~~regardless of f.o.b. point or any other condition of the sale.~~

29 ~~(i) Section 41(h) of the Internal Revenue Code, relating to~~
30 ~~termination, shall not apply.~~

31 ~~(j) Section 41(g) of the Internal Revenue Code, relating to~~
32 ~~special rule for passthrough of credit, is modified by each of the~~
33 ~~following:~~

34 ~~(1) The last sentence shall not apply.~~

35 ~~(2) If the amount determined under Section 41(a) of the Internal~~
36 ~~Revenue Code for any taxable year exceeds the limitation of~~
37 ~~Section 41(g) of the Internal Revenue Code, that amount may be~~
38 ~~carried over to other taxable years under the rules of subdivision~~
39 ~~(f), except that the limitation of Section 41(g) of the Internal~~

- 1 ~~Revenue Code shall be taken into account in each subsequent~~
- 2 ~~taxable year.~~
- 3 ~~SEC. 3. This act provides for a tax levy within the meaning of~~
- 4 ~~Article IV of the Constitution and shall go into immediate effect.~~

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